IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.68254-M of 2005 (O&M)

Date of Decision: January 10, 2007

Subroto Kumar Dey

...Petitioner

VERSUS

The State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Suman De Advocate with
Mr.Luv Malhotra, Advocate,
for the petitioner.

Mr.M.C.Berry, Sr.DAG, Punjab,
for the State.

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Invoking the provisions of Section 468 Cr.P.C., the petitioner has sought quashing of FIR No.146/2003 dated 8.4.2003 registered under Sections 279/337 IPC at Police Station, Dhandar Kalan, Focal Point, Ludhiana. The petitioner claims that the present case cannot be proceeded against him in view of the limitation laid down under Section 468 Cr.P.C. as the charge-sheet in this case has been filed after expiry of period of one year and thus would bar

the taking of cognizance of the offence against him by the Court of Chief Judicial Magistrate, Ludhiana.

FIR was registered on 8.4.2003 within the jurisdiction of Police Station, Dhandar Kalan, Focal Point, Ludhiana under Sections 279/337 IPC in connection with an accident, which took place on 7.4.2003. After investigation, a charge-sheet was filed on 9.8.2004. On 18.10.2004 charges were framed against the petitioner. On 30.4.29005, the petitioner moved an application for recalling of the summoning order against him on the ground that the challan had been filed after the period of limitation and as such the cognizance had been taken on the expiry of the period of limitation as provided under Section 468 Cr.P.C. This application, however, was rejected by the Magistrate on 3.9.2005 by relying on the case of Subramanium Sethuraman v. State of Maharashtra & Anr, 2005(1) Chandigarh Law Reporter page 10 by holding that Magistrate has no power to recall or review its own order and to discharge the accused. Thereafter the present petition was filed seeking quashing of the FIR and the proceedings on the grounds, as afore-mentioned.

On notice having been issued, the reply was filed. A preliminary objection was raised in regard to the maintainability of the petition on the ground that the petitioner would have an equally efficacious remedy to file a revision petition against the order dated 9.8.2004, whereby the charges were framed against the petitioner. On merits, it is contended that the petitioner never raised any objection in this regard at the time of framing of charge and hence he cannot be heard on this count now, specially so when he has filed a petition under Section 482 Cr.P.C. During the pendency of the case,

the petitioner moved Crl.Misc.No.1083 of 2006 for placing on record notice dated 20.6.2003 issued to him under Section 160 Cr.P.C. and order dated 23.6.2003 passed by the High Court of Delhi.

I have heard the learned counsel for the parties.

The counsel for the petitioner, while relying on the case of State of Punjab v. Sarwan Singh, 1981 Crl.L.J.722, would submit that the object of Criminal Procedure Code in putting a bar of limitation on prosecution was clearly to prevent the parties from filing cases after a long time, as a result of which the material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of offence. He has also referred to Moti Pathak and others v. State of U.P., 1988 (2) Crimes page 659 to say that the plea of bar of limitation can be raised at any stage of proceedings. Even when it was not raised, the Magistrate should have considered his power and authority in the light of sections 468 and 473 Cr.P.C.

Section 468 Cr.P.C. creates a bar for taking cognizance of an offence after expiry of period of limitation and reads as:-

> “468. Bar to taking cognizance after lapse of the period of limitation.-(1)Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.
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> (2)The period of limitation shall be-
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> (a) six months, if the offence is punishable with fine only;
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> (b) one year, if the offence is punishable with

imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

Accordingly a period of one year is provided as a limitation in respect of those offences, which are punishable with imprisonment for a term not exceeding one year. As the offences charged in this case being under Sections 279/337 IPC are punishable with one year imprisonment, the limitation in this case would be one year. However, Section 468 Cr.P.C. cannot be read in isolation. The commencement of period of limitation is regulated by the provisions of Section 469 Cr.P.C. and this reads as under:-

"469. Commencement of the period of limitation.-(1) The period of limitation, in relation to an offence, shall commence,-

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer,

whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded."

It would be thus clear that the period of limitation in relations to an offence would commence from different dates depending upon three situations, as noticed in Section 469 (a) (b) and (c). Thus, the period of limitation would commence from the date of offence or from some different dates depending upon the knowledge about the offence or the identity of the offender. The period of limitation accordingly would commence from the date of offence if the identity of the offender as well as the offences is known. The FIR, which was registered on 8.4.2003 in this case, would clearly show that the identity of the offender was not known and it was against a driver of a Uno Car, whose registration number was noted in the FIR. Accordingly, for the purpose of limitation, the provisions of Section 469 (c) Cr.P.C. would come into play. A reading of this sub-clause of Section 469 would clearly show that the limitation in this case would commence from the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier. It is also required to be noticed that the

limitation is to be counted upto the date of taking cognizance of the offence. It is not made clear from the record as to when the identity of the petitioner was revealed as an offender to the person aggrieved by this offence or to the police officer. By relying upon the documents produced through Crl.Misc.No.1083 of 2006 the counsel would say that the identity of the offender became known on 20.6.2003 or 23.6.2003 when the notice under Section 160 Cr.P.C. was issued to him. The copy of the notice issued to one Shri Subroto Kr.Dey R/o H-1739, Chitranjan Park, Delhi would show that this notice was issued to him being the registered owner of Fiat UNO Car No.DL-3CJ-8845. This notice cannot be read to mean that identity of the petitioner as an accused has been revealed or known to the person aggrieved by the offence or the police officials. In fact the investigations were going on to find as to who was driving this UNO vehicle, which had met with an accident at Ludhiana. The submission that identity of the petitioner as an offender was revealed from this notice cannot be accepted. The matter was still under investigation. Accordingly, the submission of the counsel for the petitioner that the charge sheet, which was filed on 9.8.2004 would be beyond the period of limitation, cannot be accepted. It was for the petitioner to establish as to when really his identity was revealed in view of the provisions of Section 469 (c) Cr.P.C. He was also required to establish as to what is the date of taking cognizance of the offence in this case. It has been otherwise conceded by the petitioner that the investigation in this case was complete and charge sheet was filed on 9.8.2004. As to when cognizance is taken of an offence will depend upon the facts and circumstances of each case and it is

impossible to attempt to define what is meant by taking cognizance. This was so observed by the Hon'ble Supreme Court in Narayandas Bhagwandas Madhavdas v. The State of W.B., AIR 1959 Supreme Court 1118. Accordingly, the issuance of search warrant for the purpose of investigation or of a warrant of arrest for that purpose cannot by themselves be regarded as acts by which cognizance is taken of an offence. It was further observed that it is only when a Magistrate applies his mind for the purpose of proceeding under Section 200 and subsequent sections of Ch.XVI of the Code of Criminal Procedure or under Section 204 of Ch.XVII of the Code that it can be positively stated that he had applied his mind and therefore had taken cognizance. It was also observed by the Hon'ble Supreme Court in Darshan Singh Ram Kishan v. The State of Maharashtra, 1971(2) Supreme Court Cases 654 that taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. It was further observed that cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence and this is the position whether the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer. Therefore, when a Magistrate takes cognizance of an offence upon the police report, prima facie, he does so of the offence or offences disclosed in such report.

Since it is not being made clear from the record as to when actually the police established the identity of the petitioner as an offender or came to know his identity, as such it cannot be said

that limitation would run from the date of the offence. It can also not be said that his identity stood established when he was issued notice on 20.6.2003. It is brought on record that thereafter the petitioner had approached the High Court of Delhi and obtained an order dated 23.6.2003. It was thereafter that the petitioner would have appeared before the police for investigation and ultimately the charge sheet was filed on 9.8.2004. It may be noticed that the identity of the petitioner was revealed only on the completion of investigation and accordingly for the purpose of limitation, the date of filing the challan may only be relevant.

In view of this position, it cannot be said that cognizance in this case has been taken beyond the period of limitation. Accordingly, I am not inclined to interfere in this case and would dismiss the same. However, the petitioner may, if so advised, raise the plea of limitation before the trial court during the course of trial when the case is ultimately decided or dealt with on merits.

January 10, 2007 (RANJIT SINGH)
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